

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

FLORENCIO MENCHACA

Plaintiff,

vs.

PENTAGROUP FINANCIAL, LLC,

Defendant.

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**COMPLAINT**

**INTRODUCTION**

1. Plaintiff Florencio Menchaca brings this action to secure redress from unlawful credit and collection practices engaged in by defendant Pentagroup Financial, LLC. Plaintiff alleges violation of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. (“FDCPA”). The FDCPA broadly prohibits unfair or unconscionable collection methods; conduct which harasses, oppresses or abuses any debtor; and any false, deceptive or misleading statements, in connection with the collection of a debt; it also requires debt collectors to give debtors certain information. 15 U.S.C. §§1692d, 1692e, 1692f and 1692g.

**VENUE AND JURISDICTION**

2. This Court has jurisdiction under 15 U.S.C. §1692k (FDCPA), 28 U.S.C. §1331 and 28 U.S.C. §1337.

3. Venue and personal jurisdiction in this District are proper because:

- a. Defendant’s collection communications were received by plaintiff within this District;
- b. Defendant transacts business within this District.

**PARTIES**

4. Plaintiff Florencio Menchaca is an individual who resides in the Northern District of Illinois.

5. Defendant Pentagroup Financial, LLC is a limited liability company chartered under the law of Texas with its principal offices at 5959 Corporate Drive, Suite 1400, Houston, TX 77036. Its registered agent and office is CT Corporation System, 208 S. LaSalle St., Chicago, IL 60604.

6. Pentagroup Financial, LLC is engaged in the business of a collection agency, using the mails and telephone to collect consumer debts originally owed to others.

7. Pentagroup Financial, LLC is a debt collector as defined in the FDCPA.

### **FACTS**

8. On or about September 22, 2011, a representative of Pentagroup Financial, LLC using the name Lily Lauderbach left two messages on plaintiff's voicemail.

9. Defendant was attempting to collect a debt incurred for personal, family or household purposes.

10. The first message stated:

**This message is for Florencio Menchaca. Contact Lily Lauderbach, offices of Pentagroup Financial, LLC out of Houston. I need for you to call our office back as soon as you get this message. We've been in contact with Bank of America. You're with a Sales Service Specialist there. You need to call me as soon as you get this message. 832-615-2381. I'm in the office here until five o'clock Central Standard Time.**

11. The second message stated:

**This message is for Florencio Menchaca. Contact Lily Lauderbach, offices of Pentagroup Financial, LLC. Uh, Florencio, I have left you several messages. You need to get in contact with our office back here this afternoon. I will be here only up until four. You're in a state where it's a non-protected state. It is a garnishment state. I need a return phone call. 832-615-2381. We'll take the liberty of beginning contact with the necessary people to get a return phone call if we need to. 832-615-2381.**

12. The number 832-615-2381 belongs to defendant.

### **COUNT I – FDCPA**

13. Plaintiff incorporates paragraphs 1-12.

14. Defendant's messages violated 15 U.S.C. §§1692e, 1692e(2), 1692e(5), 1692e(10), and 1692e(11).

15. Each telephone message was a "communication" within the meaning of 15 U.S.C. §§1692d(6) and 1692e. *Foti v. NCO Financial Systems*, 424 F.Supp.2d 643, 669 (S.D.N.Y. 2006); *Hosseinzadeh v. M.R.S. Associates, Inc.*, 387 F.Supp.2d 1104, 1112, 1118 (C.D.Cal. 2005); *Joseph v. J. J. MacIntyre Cos.*, 281 F.Supp.2d 1156 (N.D.Cal. 2003); *Stinson v. Asset Acceptance, LLC*, 1:05cv1026, 2006 WL 1647134, 2006 U.S. Dist. LEXIS 42266 (E.D. Va., June 12, 2006); *Belin v. Litton Loan Servicing, LP*, 8:06-cv-760-T-24 EAJ, 2006 U.S. Dist. LEXIS 47953 (M.D.Fla., July 14, 2006).

16. The messages violate 15 U.S.C. §§1692e, 1692e(2), 1692e(5), 1692e(10), and 1692e(11) because:

- a. Neither message contains the warning required by 15 U.S.C. §1692e(11).
- b. The second message falsely suggests that a lawsuit has been filed by using the term "garnishment".
- c. The second message falsely suggests a threat to contact third parties.

17. Section 1692e provides:

§ 1692e. False or misleading representations [Section 807 of P.L.]

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: . . .

(2) The false representation of--

(A) the character, amount, or legal status of any debt; . . .

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken. . . .

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a

consumer.

(11) The failure to disclose in the initial written communication with the consumer and, in addition, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph shall not apply to a formal pleading made in connection with a legal action. . . .

WHEREFORE, the Court should enter judgment in favor of plaintiff and against defendant for:

- (1) Statutory damages;
- (2) Attorney's fees, litigation expenses and costs of suit;
- (3) Such other and further relief as the Court deems proper.

s/Daniel A. Edelman

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**NOTICE OF LIEN**

Please be advised that we claim a lien upon any recovery herein for 1/3 or such amount as a court awards.

s/Daniel A. Edelman

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